

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUVENTINO SOLIS)	
Claimant)	
VS.)	
)	Docket No. 220,773
BROOKOVER FEED YARDS, INC.)	
Respondent)	
AND)	
)	
KANSAS LIVESTOCK ASSOCIATION)	
Insurance Carrier)	

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Kenneth S. Johnson dated April 2, 1997, wherein Judge Johnson denied claimant's request for an additional prosthetic device for claimant's left hand.

ISSUES

- (1) Whether claimant suffered a new accidental injury arising out of and in the course of his employment with the respondent, or whether claimant's need for a prosthetic device stems from the original injury.
- (2) Whether claimant is entitled to a second silicone prosthetic device for his left hand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

This matter was appealed by claimant in Docket No. 220,773 but in claimant's Petition for Review to the Workers Compensation Board, claimant argues issues in both Docket Nos. 220,773 and 190,678. A brief review of the factual history of both cases is necessary. Claimant originally suffered accidental injury on August 30, 1993, when his left hand became caught in machinery at respondent's feed yard. As a result of this accident, claimant suffered a partial amputation of his left hand and was provided a prosthetic device for the left hand.

In 1996 claimant's prosthetic device became worn out and claimant requested a replacement and/or repair. At the time of the original injury respondent was insured by USF&G, but is currently insured by the Kansas Livestock Association. The issue before the Administrative Law Judge in Docket No. 190,678 was whether the claimant was entitled to the repair of his prosthetic device resulting from the original injury in 1993 or whether claimant had suffered a new injury necessitating the filing of a new claim. In Docket No. 190,678, the Administrative Law Judge denied claimant's request for repair of the prosthetic device finding that claimant had suffered a new accidental injury arising out of and in the course of his employment with the respondent, necessitating the filing of a new claim. This Order issued March 3, 1997, was appealed by claimant to the Appeals Board on March 13, 1997. On May 5, 1997, an Order was issued from the Appeals Board affirming the Order of the Administrative Law Judge.

Claimant filed a new Form E-1 on March 7, 1997, and was assigned Docket No. 220,773. This matter went to preliminary hearing on April 2, 1997. At that time the Court was advised by the respondent and its insurance carrier that the prosthetic device had been fixed voluntarily by the new insurance company thus rendering that issue moot. Claimant, however, contended he needed a second prosthetic device to use if and when the first one wore out. This request for a second prosthetic device was rejected by Administrative Law Judge Johnson when he found there was no authority within the law requiring the respondent to provide two prostheses. It is from that Order that this appeal is taken. Therefore, even though claimant argues both docketed cases in his brief, the only issue currently before the Appeals Board is claimant's request for a second prosthetic device in Docket No. 220,773.

K.S.A. 1996 Supp. 44-534a and K.S.A. 1996 Supp. 44-551 limit the right of parties to appeal from preliminary hearing orders to certain jurisdictional issues. Specifically, the Appeals Board can consider whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain differences apply. The Appeals Board can also consider an appeal if it is alleged that the Administrative Law Judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 1996 Supp. 44-534a specifically allows an administrative law judge the jurisdiction to decide issues dealing with temporary total disability compensation and medical treatment.

K.S.A. 1996 Supp. 44-510(a) requires the employer to provide certain medical treatment including any "apparatus" which may be reasonably necessary to cure and relieve the employee from the effects of the injury. A prosthetic device or artificial member is an "apparatus" as defined in Kansas' Administrative Regulation 51-9-2. As such, the Administrative Law Judge was well within his jurisdiction to decide whether the second prosthesis was reasonable and necessary. The decision by Administrative Law Judge Johnson to deny claimant an additional prosthetic device is not an issue which is appealable to the Workers Compensation Appeals Board from a preliminary hearing and as such claimant's appeal on that matter is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant's appeal from the April 2, 1997, Order of Administrative Law Judge Kenneth S. Johnson should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Robert A. Levy, Garden City, KS
David J. Rebein, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director